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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,891	06/14/2005	Raymond Seltzer	HC/1-22816/A/CGC 2135/PCT	5156
324	7590	03/24/2008	EXAMINER	
JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			DEES, NIKKI H	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			03/24/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,891	<b>Applicant(s)</b> SELTZER ET AL.	
	<b>Examiner</b> Nikki H. Dees	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5-13 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 14-17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

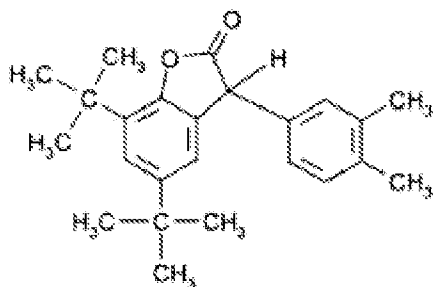
### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>19 September 2005</u> .                                       | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of the compound shown below in the reply filed on February 19, 2008, is acknowledged.



(Va)

Prosecution will continue on claims 1-4, 14-17, 19 and 20, drawn to the elected invention. Claims 5-13 and 18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Applicants state that the election includes claim 18. However, claim 18 is drawn to amines and nitrones, which are not included in the elected species. As such, claim 18 will be included in the claims withdrawn from further consideration.

***Claim Rejections - 35 USC § 102***

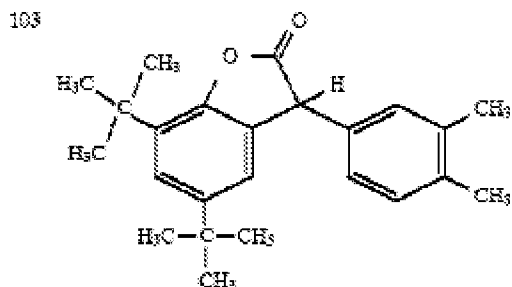
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Nesvadba (5,814,692).

4. Nesvadba teaches 3-arylbenzofuranones, including compound 103 shown below, that are identical to compounds as claimed by applicant.



Additional examples of related compounds are shown in Table 1 of Nesvadba.

Nesvadba states that the compounds are suitable for stabilizing organic materials against oxidative degradation (col. 25 lines 19-21). Examples of materials that are suitable to be stabilized include naturally occurring organic materials such as animal and vegetable fats, oils and waxes (col. 29 lines 16-23). One of ordinary skill could clearly envisage the ingestion of animal or vegetable fats, oils and waxes, thus rendering the teachings of Nesvadba anticipatory of Applicants' claims 1-4.

5. Nesvadba further teaches that the compounds are to be added to the materials where degradation is to be retarded in amounts preferably ranging from 0.01 to 2% by weight (col. 28 lines 43-46). This range significantly overlaps that claimed by Applicants and is thus considered to be anticipatory of Applicants' claims 14 and 15.

6. Nesvadba teaches that the compounds of his invention may be provided in combination with antioxidants including tocopherols (col. 29 item 1.4) and esters of 3,5-di-tert-butyl-4-hydroxyphenyl acetic acid with mono- or polyhydric alcohols (col. 30 item 1.16). These teachings anticipate Applicants' claims 16 and 17.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nesvadba (5,814,692).

9. Nesvadba teaches 3-arylbenzofuranones for use in combination with animal and vegetable fats, oils and waxes to retard oxidative degradation as detailed above.

10. Nesvadba is silent as to the edible organic substance being a food containing fatty acid glycerides, edible fats or fatty oils, as well as the organic substance being a pet food or animal feed.

11. As Nesvadba teaches fats, oils and waxes comprising 3-arylbenzofuranones, it would be obvious to one of ordinary skill to further include the fats, oils and waxes with the compounds in foodstuffs where desired. Foodstuffs would also include pet food or animal feed. The inclusion of the 3-arylbenzofuranone would not have required undue experimentation on the part of the artisan, and would have been expected to result in a food product that maintained its organoleptic properties while having an improved resistance to oxidative degradation.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nikki H. Dees  
Examiner  
Art Unit 1794

/Carol Chaney/  
Supervisory Patent Examiner, Art Unit 1794